

Remarks

This amendment is responsive to the Office Action mailed November 6, 2003 in connection with the above-identified patent application. Reconsideration of rejected claims is respectfully requested.

35 U.S.C. § 102(b) Rejections:

Claims 7, 11, 13, 17, 61-62, 65-66, 68-69 and 73 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kobey (U.S. Patent No. 3,496,707). Kobey was stated to disclose a mower including a deck (20) with at least four sides with at least three rigid side walls (40), at least one cutting blade (24), and a guard (34). The guard was stated to be attached via a hinge (42) between two sidewalls and extends at obtuse angles from the sidewalls. The guard was further stated to have two discrete segments that are angled from each other by ninety degrees.

Claim 61

With regard to claim 61, the horizontal plane of the deck was deemed to be coplanar with a horizontal plane of the guard (see Fig. 3). With regard to claims 7, 63, 66, and 69, an actuating member (52) was stated to be mounted on the deck and on the guard away from the hinge. Claim 61 and claims 2, 3, 7, 38 and 62-64 dependent thereon have been canceled without prejudice.

It is respectfully submitted that claims 7, 11, 13, 17, 65-66, 68-69 and 73 patentably define over Kobey, either taken alone or in view of Thagard (U.S. Patent No. 5,657,620).

Claim 65

More particularly, claim 65 patentably defines over either Kobey or Thagard, since neither reference shows a guard with a horizontal plane that is parallel to and spaced from the horizontal plane of the deck in one orientation of the guard. Rather, the horizontal plane of the guard of Kobey is co-planar with the horizontal plane of the deck (see Fig. 3 of Kobey). The Examiner acknowledges this in the rejection of claim 61, noting that the horizontal plane of Kobey's deck is co-planar with a horizontal plane of the guard. Thagard also discloses a guard and a deck having co-planar horizontal planes (see Fig. 1 of Thagard). Thus, claim 65 and claims 10, 11, 13, 17, 39 and 66-67 dependent thereon, are in condition for allowance.

Claim 68

Claim 68 has been amended to recite that a plurality of discretely angled sections form a corner of the deck. In the embodiment of Figure 3A of the present specification, there are a number of discretely angled sections 124-136. These form one corner of the mower. In contrast, in Kobey (Fig. 2) the discretely angled sections form the front wall and parts of two adjacent side walls, not one corner. Thagard shows a similar design. Accordingly, claim 68 is patentable over either Kobey or Thagard or their combination since these references simply do not disclose a guard having a plurality of discretely angled sections which form one corner of a deck. Moreover, claims 19, 40 and 69-71 dependent thereon are also in condition for allowance.

Claim 73

Claim 73 also defines over Kobey. Claim 73 recites the two opposed corners along the front edge of the deck, as shown in Fig. 6 of the present specification. A first corner includes the guard, which is selectively pivotable to a position above a plane of the deck. A second corner, located adjacent the guard assembly, comprises two side walls which are rigid and non-moving. A first side of the deck includes both the first and second corners. In contrast, Kobey's guard extends along the entire front edge of the mower and includes both corners. Thus, Kobey does not show two opposed corners along one side of a deck where one corner has two side walls which are rigid and non-moving and the other corner has a guard assembly pivotable to a position above the plane of the deck. Accordingly, claim 73 is also in condition for allowance.

35 U.S.C. § 103 Rejections:

Claims 2, 10 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thagard, et al. (U.S. Patent No. 5,657,620), presumably in view of Kobey. The Examiner stated that Kobey uses a manually operated cable to open and close the guard. Thagard, et al. was stated to disclose a hydraulic cylinder and piston assembly to move a guard. The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the cable actuator of Kobey with a hydraulic cylinder and piston actuator of Thagard in order to facilitate operator ease.

Claim 2 has been canceled without prejudice. Claim 10 depends from claim 65 and is submitted to be in condition for allowance for the reasons discussed earlier. Claim 19 depends from claim 68 and is also in condition for allowance for the reasons discussed above.

Claims 3, 38-40, 63-64, 67, and 70-71 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Thagard, presumably in view of Kobey. Kobey was stated to disclose the invention described above except that Kobey has a rigid sidewall on the guard instead of a flap. Like Kobey, Thagard was stated to disclose a guard on a mower deck with a sidewall. Unlike Kobey, Thagard was further stated to teach making the sidewall a folding one-piece flap which is spaced from a plane of the guard to expose the blade for cutting. The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the sidewall of the guard in Kobey a flap, as in Thagard, in order to increase cutting efficiency by increasing exposure of the blade.

Claims 3 and 38, 63, and 64 have been canceled. Claims 39 and 67 depend from claim 65 which is in condition for allowance for the reasons advanced above. Claims 40, 70 and 71 depend from claims 68 and are also in condition for allowance for the reasons advanced above.

Claim 72

Claim 72 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobey in view of the MoTrim Mower Brochure. Kobey was stated to disclose the claimed deck and guard assembly detailed above. However, the mower in Kobey is

a push mower instead of a boom mower. Like Kobey, the MoTrim Boom Mower Brochure was stated to disclose a mower head with a guard used to cut brush. The guard design of the MoTrim brochure is also shown in Fig. 2A of the instant application specification, and is stated to be in the prior art.

It was noted in the Office Action that, unlike Kobey, the mower deck and guard assembly in MoTrim is attached to a boom. The Examiner concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to alternately attach the mower deck and guard assembly of Kobey to a boom, as in the MoTrim Boom Mower Brochure.

It is respectfully submitted that claim 72 is also patentable over Kobey in view of the MoTrim brochure, even in combination. Claim 72 recites a guard assembly pivotally attached to a deck adjacent a second side edge, opposite a first side edge to which a boom arm is attached. Claim 72 is patentable over Kobey even in view of the MoTrim brochure, because there is no motivation in either MoTrim or Kobey to replace the retractable cover shown in the MoTrim brochure with a modified Kobey guard, which extends only over a section of the front edge of the deck as is shown in the MoTrim brochure. Rather, Kobey teaches a guard which extends over the entire front edge of the mower.

In that regard, Kobey states that the front portion of a mower housing can be hinged to expose the blade in order to enable the blade to sever the stalks of tall plants before the leading edge of the housing reaches same (col. 1, lines 40-44). In contrast, in the MoTrim brochure, the leading edge of the housing, namely the inside edge, near the boom, reaches

the taller plants meant to be cut before the blade does, since it takes the taller plants to push the swinging guard rearward, above the blade and below the deck, enabling such plants to be cut.

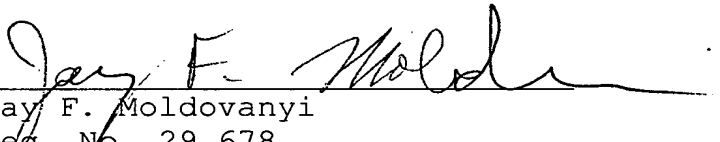
In other words, the guard designs shown in Kobey and MoTrim are so different that they cannot be combined without destroying the function of one or the other. Indeed, Kobey teaches away from the invention recited in claim 72. Namely, Kobey teaches exposing the entire front wall of the housing, and parts of the two adjacent side walls, as shown in Figure 1 thereof. Thus, it would not have been obvious to combine Kobey with the MoTrim brochure and claim 72 is patentable over the asserted combination thereof.

Conclusion

All formal and informal matters having been addressed, it is respectfully submitted that this application is now in condition for allowance. Accordingly, entry of the amendment is respectfully requested. Early notice to that effect is respectfully solicited.

Respectfully submitted,

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